things which are or are not in esse when the covenant is made where they do not concern the use and enjoyment of the demised premises, there certainly is none where the covenant directly concerns such use and enjoyment." The second resolution in *Spencer's Case* assumes in each instance that the covenant "directly concerns" the thing demised, and the presence of that fact in the principal case only goes to supply that ever-present requisite, and does not at all touch the necessity of "naming" the assignees, which is directly governed by whether the covenant concerns a thing in esse. If there is an option on the part of the tenant to improve, the covenant to pay for such improvement is considered personal, and will not run. *Hite* v. *Parks,* 2 Tenn. Ch. 373; *Cicalla* v. *Miller,* 105 Tenn. 255; *Gardner* v. *Samuel,* 116 Calif. 84, 47 Pac. 935; *Batchelder* v. *Dean,* 16 N. H. 265. The court succeeded in finding in the language used, a covenant on the part of the lessee to improve.

CRIMINAL LAW—INTENT TO COMMIT ABORTION.—Defendant was convicted of the crime of abortion. The judge of the lower court charged the jury that "an intent to produce a miscarriage may exist without absolute knowledge of pregnancy. And if there be a mere suspicion that pregnancy exists, there may be an intent to cause a miscarriage if the suspected condition exists." *Held,* the charge as to the existence of the intent along with mere suspicion of pregnancy was correct. *State* v. *Loomis* (N. J.), 97 Atl. 896.

Courts have generally agreed that intent on the part of the accused to commit an abortion is an essential element of the crime. *State* v. *Jones,* 4 Pennewill 109, 53 Atl. 858; *State* v. *Gaul* (Wash.), 152 Pac. 1029. It has also been held as in the principal case that intent to commit an abortion may be present without knowledge or even strong belief that the woman is pregnant. *State* v. *Powe,* 48 N. J. Law 34. "Intention does not necessarily involve expectation. I may intend a result which I well know to be extremely improbable. So an act may be intentional with respect to a particular circumstance, although the chance of the existence of that circumstance is known to be exceedingly small. Intention is the foresight of a desired issue, however improbable—not the foresight of an undesired issue, however probable. If I fire a rifle in the direction of a man half a mile away, I may know perfectly well that the chance of hitting him is not one in a thousand; I may fully expect to miss him; nevertheless, I intend to hit him if I desire to do so. He who steals a letter containing a cheque intentionally steals the cheque also, if he hopes that the letter will contain one, even though he well knows the odds against the existence of such a circumstance are very great. Conversely, expectation does not in itself amount to intention. An operating surgeon may know very well that the patient will probably die of the operation; yet he does not intend the fatal consequence which he expects. He intends the recovery which he hopes for but does not expect." Salmond on Jurisprudence (4th ed.) 336. For an analogous problem see 14 MICH. L. REV. 399.

DAMAGES—EVIDENCE OF INDUSTRIOUS HABITS ADMISSIBLE.—Plaintiff sued for damages based on injuries sustained through defendant's fault. He became unconscious, continued in that state for several days and suffered from permanent diminution of hearing, recurring headaches and dizziness. The

lower court permitted plaintiff to prove his industrious habits. *Held,* the evidence was properly admitted to aid the jury in determining plaintiff's earning power and the amount of damages. *Forsyth* v. *Wallace et al.* (Wash. 1916), 159 Pac. 696.

The court declined to exclude the proof under either the reasoning or the rule in *Davis* v. *Karnman,* 141 Ala. 479, 37 South. 789, or in *Pennsylvania R. Co.* v. *Books,* 57 Pa. 339, 98 Am. Dec. 229. These cases refused to allow evidence of industrious habits on the ground that it would prejudice the jury and lead to unjust damages. They are supported by *Louisville & Nashville R. Co.* v. *Woods,* 115 Ala. 527, 22 South. 33. The principal case follows the doctrine laid down in *Louisville & Nashville R. Co.* v. *Daniel,* 122 Ky. 256, 91 S. W. 691, 28 Ky. Law Rep. 1146, 3 L. R. A. (N. S.) 1190; *Metropolitan St. Ry. Co.* v. *Kennedy,* 82 Fed. 158, 27 C. C. A. 136; *Cameron Mill etc., Co.* v. *Anderson,* 98 Tex. 156, 81 S. W. 282, 1 L. R. A. (N. S.) 198. In these cases the view is taken that industrious habits are a part of a man's earning power and evidence of such habits is admissible as bearing upon the damages sustained. This rule is apparently in accordance with the weight of authority, and has been followed in *Texas Mexican Ry. Co.* v. *Douglas,* 73 Tex. 325; *Houston & T. C. Ry. Co.* v. *Cowser,* 57 Tex. 293. It is well settled that it is material to show the industrious habits of deceased as bearing upon what he might have earned for those entitled to his estate, when injury results in death. *Central of Ga. Ry. Co.* v. *Perkerson,* 112 Ga. 923, 38 S. E. 365, 53 L. R. A. 210; *Central Railroad* v. *Thompson,* 76 Ga. 770; *Baltimore & Ohio R. R. Co.* v. *Wightman's Admr.,* 29 Grat. (Va.) 431, 26 Am. Rep. 384; *International & G. N. Ry. Co.* v. *McNeel,* (Tex. Civ. App. 1895), 29 S. W. 1133; *David* v. *Southwestern R. Co.,* 41 Ga. 223; *Burton* v. *Wilmington & W. R. Co.,* 82 N. C. 505; *Chicago* v. *Sholten,* 78 Ill. 472; *Donaldson* v. *The Miss. & Mo. R. Co.,* 18 Ia. 280; *Pennsylvania R. Co.* v. *Butler,* 57 Pa. 335; *Kesler* v. *Smith,* 66 N. C. 154. There seems to be no valid reason why habits of industry should not be considered to enable the jury to determine pecuniary loss sustained by injuries not resulting in death.

DIVORCE—ALIMONY.—The husband had dissipated nearly all of a considerable property inherited by him. The wife sued for divorce and alimony. *Held,* that an award of the greater part of the husband's property, real and personal, for support of the wife and her three small children was not excessive. *Snay* v. *Snay* (Mich. 1916), 158 N. W. 858.

The amount of the alimony rests in the sound discretion of the court and many things are considered in measuring it, such as: the husband's health, age, earning capacity, future prospects and probable acquisition of wealth from any source, the amount of property owned by him and the amount owned by his wife. The amount of the alimony depends on the peculiar circumstances of each case. *Hooper* v. *Hooper,* 102 Wis. 598; *Bialy* v. *Bialy,* 167 Mich. 559. The weight of authority is opposed to awarding specific property except when authorized by statute as in Michigan. *Calame* v. *Calame,* 25 N. J. Eq. 548; *Brenger* v. *Brenger,* 142 Wis. 26. Some courts hold that there need be no such statutory authority to award real estate as alimony.